

SUBJECT: Uniform Condominium Act

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 10 ayes — Brimer, Mowery, Averitt, Brady, Corte, Crabb, Giddings, Jackson, Kamel, Rudd

0 nays

1 absent — Romo

WITNESSES: For — Sharon Reuler; Larry Niemann, Texas Apartment Association and Texas Building Owners and Managers Association; Lyle Johansen, Texas Association of Builders; Parker McCollough, Texas Association of Realtors; Carol Cothren, San Antonio CAI Chapter and ProComm; Nancy Strauss and Dane Greathouse, San Antonio CAI Chapter and Strauss Properties, Inc.; Marjorie Jean Meyer, Houston Chapter of the Community Associations Institute; Bruce Schimmel.

Against — None

DIGEST: CSHB 156 would create the Uniform Condominium Act, effective January 1, 1994, as Chapter 82 of the Property Code. The act would govern residential, industrial and all other types of condominiums. A condominium would be defined as real property with portions designated for separate ownership and occupancy and with the remainder (the "common element") designated for common ownership or occupancy solely by the owners of the portions. Real property would not be considered a condominium if the common elements were owned by an legal entity other than the unit owners.

Condominium regimes created before the bill's effective date could continue to be governed by the existing condominium act, in Property Code Chapter 81, or choose to be governed by the new act. The bill would establish procedures for creating a condominium by recording of a declaration and for condominium management, taxation, sales, modification of property, condemnation and other issues.

Local ordinances, regulations or building codes could not discriminate against condominium owners or developers by imposing requirements on them that would not be imposed on other types of developments.

Condominium units would be entitled to homestead exemptions from property taxes in the same manner as single-family dwellings. Each condominium unit and its interest in the common elements would constitute a separate parcel of property for taxation. A declarant — a person or group offering a condominium interest as part of a common promotional plan — would be responsible for the payment of taxes on common areas for which the declarant had reserved developmental rights.

Owners would be able to make improvements or alterations to a condominium if they did not impair the structural integrity or mechanical systems of any part of the condominium. However, owners would not be permitted to change the common areas or the exterior of the condominiums without the prior consent of the condominium association.

A condominium association's powers would include: the right to adopt and amend bylaws; set budgets; collect fees from owners for common expenses; file, defend and settle lawsuits; make contracts and incur liabilities relating to the condominium's operation; and maintain and modify the appearance of the condominium. A condominium association's board would act on behalf of the association and be liable as a fiduciary to the condominium owners for any act not permitted by the association's declaration or nonperformance of a duty owed to the association.

In the case of a condemnation proceeding, a condominium owner would be compensated for the value of the condominium and the owner's interest in the common area. The owner would be compensated for the reduction in value of the condominium and the owner's interest in the common area if the condominium was only partially condemned. The part of the condominium retained by the owner could not be practically or lawfully used in order for the owner to receive compensation for a partial condemnation.

In the event an association foreclosed on a lien on a condominium and, in turn, bought the condominium at a foreclosure sale, the owner would have

the right to repurchase the condominium before other purchasers were sought. An association would not be able to foreclose on the property if the owner's debt consisted only of fines.

Developers of condominiums would have to disclose to consumers all terms of purchase and any other information relating to the condominium. A consumer would have the right to cancel a contract for the purchase of a condominium if a developer failed to disclose the required information.

The bill would provide that suits over rights or obligations of a condominium association could be filed in a county in which any part of the condominium was located.

**SUPPORTERS
SAY:**

CSHB 156 would provide clear, comprehensive guidelines for condominium associations to follow in governing their communities. Many condominium associations have outdated declarations that have no relation to the real world. For instance, many declarations have not been updated to deal with new technology such as television satellite dishes and the issues these new devices raise for condominium management. In addition, many declarations have not been amended to comply with the Americans With Disabilities Act and the Fair Housing Act.

The bill would make it easier for board members to govern and preserve the condominium association's autonomy. The associations would still have the power to adopt and amend their declarations and could control the settling of disputes through a hearing process. This hearing process would take place at the neighborhood level, reducing the need to go to court.

The bill would enhance an association's ability to collect fees and fines from owners. Under the current law, it is hard to enforce an association's rights or require owners to comply with the association's rules. Responsible owners are being forced to compensate for owners who do not pay their share or who refuse to pay fines.

The bill would not create any additional costs for condominium owners in complying with deed restrictions or rules imposed. The bill would be fair to consumers and owners without creating a disincentive to developers to build condominium projects.

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The existing condominium act dates from 1963 and is inadequate for the world of the 1990s and beyond; a major revision was recommended by a House study committee as far back as 1979. The new act would bring Texas law up to date and make it conform with a model condominium act that has been adopted in about 20 states.

OPPONENTS
SAY:

No apparent opposition

NOTES:

A substantially similar bill, HB 2308 by Eckels, was placed on the Consent Calendar during the 1991 regular session, but was subsequently withdrawn from the calendar. The bill was transferred to the Calendars Committee, which placed it on the General State Calendar, but it was not considered by the House.

The committee substitute made numerous changes in HB 156, mostly nonsubstantive amendments to clarify language or make the bill's provisions internally consistent or consistent with other law.